

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CC Docket No. 98-67
)	
)	
Petition of Telco Group for Declaratory Ruling or Waiver)	
)	

OPPOSITION OF MCI

I. SUMMARY

Telco Group, Inc (“Telco Group”), a provider of domestic and international prepaid card services, has petitioned the Commission for either a declaratory ruling to exclude international revenues from the revenues used to calculate contributions to the interstate telecommunications services relay services fund (“TRS Fund”), at least if a domestically operating company’s international revenues constitute a large percentage of its total revenues; or to grant a waiver to entirely exclude international revenues from the contribution base for the TRS Fund in the case of Telco Group.¹ MCI opposes both of Telco Group’s requests.

¹ Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver, *In the Matter of Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, filed October 18, 2004 at 1.

Telco Group argues that the current funding arrangement is inequitable because it must contribute more to the TRS fund than it earns in interstate revenues.² In general, the Commission has included all international revenues of interstate telecommunications service providers for all funds (TRS, NANPA., LNPA, FCC Regulatory Fees) other than the universal service fund on the reasoning that interstate service providers send and receive international calls and international calls benefit from the availability of a ubiquitous interstate telecommunications services market and should therefore make contributions towards the functions provided by the administrators of these other funds established to help achieve this ubiquity.³ Not only do Telco Group's customers benefit by being able to make domestic, interstate calls, they also benefit by being able to complete international relay calls. There is no equitable basis for excluding international revenues from the TRS Fund contribution base.

The Commission has exempted predominantly international carriers from contributing to the Universal Service Fund ("USF"), but did so only because it felt legally compelled to exempt companies who provided only international-international services. The Fifth Circuit Court of Appeals subsequently found this exemption discriminated against interstate service providers who offered predominantly international service. This situation was unique to the Universal Service Fund. The policy of including revenues from telecommunications services that benefit from origination from or termination to interstate service in the contribution base for the various funds supporting this ubiquity remains valid, and should be retained whenever legally permissible.

² *Id.*, at 9.

³ Instructions to the Telecommunications Reporting Worksheet, Form 499-A, Figure 3. Interstate revenues may be excluded if the carrier providing these services falls into other categories excluded from the contribution base for

Telco Group also argues that it is discriminatory for the Commission to include its international revenues in the contribution base for these above-mentioned funds and functions, again because it must contribute more to the TRS fund than it earns in interstate revenues.⁴ Telco Group fails to show how this situation is discriminatory. The Commission treats the international revenues of all interstate telecommunications providers in an identical fashion by subjecting them equally to the same contribution factor. All such revenues are included in the TRS contribution base. In fact, it would be discriminatory if Telco Group, and other internationally-oriented carriers, were allowed to exclude international revenues from the TRS contribution base. Companies such as MCI, who also earn international revenues by providing international prepaid calling services, as well as other international services, would be required to compete against companies who would have been granted a discriminatory cost advantage were the Commission to grant Telco Group's request. The Commission should therefore deny Telco Group's request to exempt some providers of international services from contributing to the TRS Fund.

II. THE FUNDING BASE FOR THE UNIVERSAL SERVICE FUND IS AN INAPPROPRIATE REFERENCE FOR THE FUNDING BASE FOR THE TRS FUND

Telco Group's claim that it is discriminatory to include international revenues in the contribution base for the TRS Fund is based on the finding by the Fifth Circuit Court of Appeals that it would be discriminatory to exclude companies with only international revenues from the funding base, but not make similar exclusions for companies with a high proportion of

other reasons. For example, telecommunications carriers that provide services only to other universal service contributors are not required to contribute to the TRS Fund or USF.

⁴ *Id.*, at 9.

international revenues.⁵ In its first Universal Service Order, the Commission felt compelled by the statutory language of the Telecommunications Act of 1996 (“1996 Act”) to exclude international revenues earned by companies providing only international service from contributing to the universal service fund (*“We find that carriers that provide only international telecommunications services are not required to contribute to universal service support mechanisms because they are not ‘telecommunications carriers that provide interstate telecommunications services’...the statute precludes us from assessing contributions on the revenues of purely international carriers providing service in the United States, even though we believe that they, too, benefit from our universal service policies.”*)⁶ Thus, the Commission included international revenues of telecommunications carriers that provided some interstate services, and excluded only those that did not provide any interstate services.

In this instance, the Commission recognized that it was inequitable and discriminatory to exclude international revenues for some carriers but not others (*“We recognize that by this decision, some providers of international services would be treated differently from others.”*)⁷ And it was this differential treatment that the Commission was unable to justify before the Fifth Circuit Court of Appeals (*“...this recognition of discrimination hardly saves the agency from the statutory requirement that contributions are collected on a non-discriminatory basis.”*)⁸

Whereas the Commission felt constrained by 47 U.S.C. 254(d) to exclude carriers who provided only international services from the contribution base, and then in response to the *Fifth*

⁵ Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999)(*Fifth Circuit Remand*).

⁶ *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), & 779

⁷ *Id.*, & 799.

⁸ *Fifth Circuit Remand* at 434.

Circuit Remand, to broaden the exclusion: first to carriers that earned more than 92 of their revenues from interstate services,⁹ and later to carriers that earned more than 88 percent of their revenues from interstate services;¹⁰ there is no statutory language that might require the Commission to exclude any sub-group of carriers providing international service from the TRS contribution base. In fact, there is no direction by Congress to even establish a shared funding mechanism for TRS. Thus, Telco Group's reliance on the *Fifth Circuit Remand*, and the Commission's response to that remand, is inapposite.

III. EXCLUDING A SUB-GROUP OF INTERNATIONAL SERVICE PROVIDERS WOULD BE DISCRIMINATORY AND INEQUITABLE

As discussed above, MCI provides both domestic and international telecommunications services and both domestic and international prepaid calling services. The markets for these services are extremely competitive. MCI contributes to the TRS Fund on the basis of both revenue streams. Were the Commission to adopt Telco Group's suggestion to exclude carriers that primarily provide international calling, MCI and other long distance carriers would be put at an unfair disadvantage in all international markets.

In order refrain from unjustly discriminating against carriers such as MCI, the Commission would need to exclude all international revenues from the TRS contribution base if it desired to reduce Telco Group's contribution to the TRS Fund. MCI does not support that course of action for it would be inequitable. All providers of international service benefit from being able to originate calls from and terminate calls to domestic customers. More specifically, all such providers may have customers that require the mediation of a relay operator. There are

⁹ Sixteenth Order On Reconsideration in CC Docket 96-45, Eighth Report And Order in CC Docket 96-45, FCC RCD FCC 99-290, rel. October 8, 1999, &19.

therefore sound equity principles that support continued inclusion of international revenues in the funding base for TRS services.

IV. Conclusion

For the reasons discussed above, MCI urges the Commission to adopt the positions advocated herein.

Respectfully submitted

/s/Larry Fenster

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¹⁰ Federal-State Joint Board on Universal Service Further Notice Of Proposed Rulemaking and Report and Order, CC Docket 96-45, FCC 02-43, rel February 26, 2002, &111.

Statement of Verification

I have read the foregoing, and to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2004

/s/Larry Fenster

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Certificate of Service

I, Michelle Lopez, do hereby certify that copies of the foregoing Petition for Reconsideration of WorldCom Inc. were sent on this 26th day of November, 2004, via email (marked in *) or first-class mail, postage pre-paid, to the following:

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